

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

19-cv-11273

EVERGREEN LINE JOINT SERVICE  
AGREEMENT, FMC NO. 011982 CONSISTING  
OF EVERGREEN MARINE CORP. (TAIWAN)  
LTD., EVERGREEN MARINE (UK) LTD., ITALIA  
MARITTIMA SPA, EVERGREEN MARINE (HONG  
KONG) LTD., AND EVERGREEN MARINE  
(SINGAPORE) PTE LTD. D.B.A. EVERGREEN  
LINE,

Plaintiffs,

- against -

BRUTOS INTERNATIONAL CORP.

Defendant.

COMPLAINT IN ADMIRALTY

Plaintiffs, by their attorneys, Cichanowicz Callan Keane & De May, LLP, for their complaint, allege on information and belief:

1. This is a civil case of admiralty or maritime jurisdiction within the meaning of 28 U.S.C. 1333.

2. Plaintiffs designate the claims pleaded in this complaint as admiralty or maritime claims within the meaning of F.R.Civ.P. 9(h).

CLAIM 1

3. Plaintiffs, EVERGREEN MARINE CORP. (TAIWAN) LTD., EVERGREEN MARINE (UK) LTD., ITALIA MARITTIMA SPA, EVERGREEN MARINE (HONG KONG) LTD., and EVERGREEN MARINE (SINGAPORE) PTE LTD., are corporations organized and existing under the laws of foreign states with offices and principal places of business in those foreign states.

4. Plaintiffs are a joint venture within the meaning of 46 C.F.R. 535.104(o) operating under the trade name, “Evergreen Line.” They carry on business as an intermodal/ocean common carrier in the foreign commerce of the United States.

5. Plaintiffs are registered with the Federal Maritime Commission under the following Organization Nos.:

020775	Evergreen Line Joint Service Agreement
020988	Evergreen Marine (Hong Kong) Limited
022005	Evergreen Marine (Singapore) Pte Ltd.
020776	Evergreen Marine (U.K.) Limited
001262	Evergreen Marine Corporation (Taiwan) Ltd.
020013	Italia Marittima S.p.A.

6. Defendant is a corporation organized and existing under the laws of California with its office and principal place of business at 2113 Huntington Drive, San Marino, CA.

7. Defendant carries on business as a non-vessel operating common carrier (“NVOCC”) within the meaning of 46 U.S.C. 40102(17).

8. Pursuant to 46 U.S.C. 40901(a), defendant is licensed as an NVOCC with the Federal Maritime Commission under License No. 024336.

9. Acting in its capacity as NVOCC, defendant was the shipper, exporter, and billing party for five “Shipper’s Load & Count” cargo shipping containers said to contain 175 pieces of “USED PE FILM” which moved by sea from Los Angeles to Ho Chi Minh City, Vietnam on board the MV APL ESPLANADE pursuant to a Sea Waybill Contract of Carriage [No. 446810176703] issued by plaintiffs and dated May 9, 2018.

10. A true copy of the face of the Sea Waybill is attached to this complaint. The reverse side terms and conditions may be reviewed here:

[https://www.evergreen-line.com/static/html/EGLV\\_BLClaus2012.pdf](https://www.evergreen-line.com/static/html/EGLV_BLClaus2012.pdf)

11. Pursuant to the Sea Waybill, plaintiffs carried the containers by sea to Ho Chi Minh City where they were discharged on June 10, 2018.

12. The containers have not been picked up by the consignee and have accrued the following charges as of December 9, 2019:

<b>ITEM</b>	<b>AMT. (Vietnamese Dong)</b>	<b>APPROX. AMT. U.S. Dollars</b> For informational purposes only, Precise amount will be subject to the applicable rate of exchange.
Container Demurrage	VND 3,098,025,200	USD 133,595
Storage/Terminal Charges	VND 146,570,000	USD 6,320
<b>Total:</b>	VND 3,244,595,200	USD 139,915

Those charges continue to accrue at VND 1,200,000 for demurrage, and VND 270,000 for storage.

13. The terms and conditions of the Sea Waybill contract of carriage provides in relevant part:

- |              |   |
|--------------|---|
| Clause 1(9)  | "Merchant" includes the shipper, * * * any person * * * entitled to the possession of the Goods or this Bill and anyone acting on behalf of any such persons.   |
| Clause 14(4) | The Merchant of the Goods shall be jointly and severally liable to Carrier for the payment of all freight, * * * Terminal Handling Charge (THC), demurrage, * * * and other charges, including but not limited to court costs, expenses and reasonable attorney's fees incurred in collecting sums due to the Carrier. * * *  |
| Clause 24    | As a result of Merchant's failure to comply with such regulations or requirements of Customs, port and other authorities, Merchant shall bear and pay all amounts incurred by the Carrier in complying with same as well as all duties, taxes, fines, imposts, expenses or losses incurred or suffered or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the |

Goods, or any seal irregularities, non conformities or deficiencies as per any local laws or regulations or, where applicable in the U.S. Trade, any tariff rules or regulations relating thereto, and indemnify the Carrier in respect thereof.

Clause 25(2) The Merchant shall take delivery of the Goods within the time provided for in the Carrier's applicable Tariff, failing which the Merchant is liable to pay for the detention/demurrage charges at the rate stipulated in the Carrier's applicable Tariff.

Clause 25(4) The Merchant's attention is drawn to the provisions concerning free storage time and cargo and equipment demurrage contained in the Carrier's applicable tariff.

Clause 29(2) \* \* \* where the shipment covered by this Bill is to or from the U.S.A.(including its districts, territories and possessions), all claims arising hereunder must be brought and heard solely in the U.S. District Court for the Southern District of New York \* \* \* to the exclusion of any other forum. Except as otherwise set out herein, United States law shall apply to such claims.

14. The claims pleaded in this complaint arise from defendant's transportation-related activities as an NVOCC.

15. All conditions precedent have been performed or have occurred.

## CLAIM 2

16. Pursuant to [46 C.F.R. 515.21](#), nonparty surety, American Alternative Insurance Corporation, has issued its financial responsibility Bond, No. 8942347 effective January 18, 2017. The Bond names defendant as principal.

17. Pursuant to [46 C.F.R. 515.23\(a\)](#), the said Bond is for the benefit of, among others, common carriers like plaintiffs who may seek payment from the Bond for damages arising out of defendant's transportation-related activities as an NVOCC.

18. Pursuant to [46 C.F.R. 515.23](#)(b)(2), the Surety must pay any Judgment for such damages within 30 days.

19. For purposes of supporting its claim against the said Bond, plaintiffs seek a declaration judgment against defendant that:


- (a) Defendant acted in this matter as an NVOCC and not a beneficial cargo owner; and that
- (b) Plaintiffs' claims arise out of defendant's transportation-related activities.

WHEREFORE, plaintiff respectfully requests judgment as follows:

- A. For the principal amount of its claims together with prejudgment interest, costs, and disbursements, including reasonable attorneys' fees; and
- B. Declaring that defendant acted in this matter a non-vessel operating common carrier and that plaintiffs' claims arise out of defendant's transportation related activities as a non-vessel operating common carrier.

Dated: White Plains, NY, December 9, 2019

CICHANOWICZ CALLAN KEANE & De MAY, LLP  
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Attorneys for Plaintiff

By:   
JOSEPH De MAY, JR.



# EVERGREEN LINE

A Joint Service Agreement

## SEA WAYBILL NON-NEGOTIABLE

(2) Shipper / Exporter BRUTOS INTERNATIONAL CORP. C/O LG BROTHER INC. 2113 HUNTINGTON DRIVE SAN MARINO, CA 91108 TEL: 1-626-2299838		(5) Document No. 81017670
(3) Consignee (complete name and address) KY PHU GIA COMPANY LIMITED NAM GIANG STREET, NHO QUAN TOWN, NHO QUAN DISTRICT, NINH BINH PROVINCE, VIETNAM TEL: (84-4) 35667688 HIENNT.HUBT@GMAIL.COM HUONGHD177@GMAIL.COM		(6) Export References BOSLMB07304
(4) Notify Party (complete name and address) KY PHU GIA COMPANY LIMITED NAM GIANG STREET, NHO QUAN TOWN, NHO QUAN DISTRICT, NINH BINH PROVINCE, VIETNAM TEL: (84-4) 35667688 HIENNT.HUBT@GMAIL.COM HUONGHD177@GMAIL.COM		(7) Forwarding Agent-Refer (Name/Address/FMC #) NIL
(12) Pre-carriage by		(8) Point and Country of Origin (for the Merchant's reference only)
(14) Ocean Vessel/Voy. No. APL ESPLANADE 302TXW		(9) Also Notify Party (complete name and address)
(13) Place of Receipt/Date LOS ANGELES, CA		(10) Onward Inland Routing/Export Instructions (which are contracted separately by Merchants entirely for their own account and risk)
(15) Port of Loading LOS ANGELES, CA		
(16) Port of Discharge HO CHI MINH		
(17) Place of Delivery HO CHI MINH		

Particulars furnished by the Merchant			
(18) Container No. And Seal No. Marks & Nos.	(19) Quantity And Kind of Packages	(20) Description of Goods	(21) Measurement (M*) Gross Weight (KGS)
CONTAINER NO./SEAL NO. BMOU5133311/ 16447343 / EISU9423512/ 16447398 / EITU1969500/ 16447341 / TCNU1651173/ 7237460 / TCNU4780976/ 2737450 /  NO MARKS		AES X20180503941179 5 X 40'HC 175 PIECES OF USED PE FILM BMOU5133311/16447343 /35 PCS/21818KGS EISU9423512/16447398 /35 PCS/16674KGS EITU1969500/16447341 /35 PCS/19868KGS TCNU1651173/7237460 /35 PCS/18597KGS TCNU4780976/2737450 /35 PCS/18316KGS	210,040.761 LBS 95,273.000 KGS 7,062.9340 CFT 200.0000 CBM  "OCEAN FREIGHT PREPAID" SHIPPER'S LOAD & COUNT 175 PIECES
(22) TOTAL NUMBER OF CONTAINERS OR PACKAGES (IN WORDS)	SAY TOTAL:	5 X 40H ONLY	(23) Declared Value \$ If Merchant enters actual value of Goods and pays the applicable ad valorem tariff rate, Carrier's package limitation shall not apply.

(24) FREIGHT & CHARGES	Revenue Tons	Rate	Per	Prepaid	Collect
(25) Waybill No. EGLV 446810176703 	(27) Number of Original Waybills NIL (0)	(29) Prepaid at LOS ANGELES, CA	(30) Collect at	(31) Exchange Rate	(32) Exchange Rate
(26) Service Type/Mode FCL/FCL O/O 	(28) Place and Date of Issue LOS ANGELES, CA MAY 09, 2018	(33) Laden on Board MAY 09, 2018 APL ESPLANADE 302TXW LOS ANGELES, CA			

FORM NO. DOC-I-006-02

**EVERGREEN SHIPPING AGENCY (AMERICA) CORPORATION**  
As Agent for the Carrier and the Vessel Provider Evergreen Marine (UK) Limited,  
doing business as "Evergreen Line"

By